



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	05/13/02	Bill No:	AB 2205
Tax:	Cigarette and Tobacco Products	Author:	Koretz
Board Position:	Support	Related Bills:	

BILL SUMMARY

Among other things, this bill would increase the penalty for possessing, selling, or offering for sale unstamped cigarettes from one hundred dollars (\$100) to two hundred dollars (\$200) for each carton of 200 cigarettes.

ANALYSIS

Current Law

Section 30474 of the Revenue and Taxation Code provides that any person who knowingly possesses, keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any unstamped package of cigarettes is guilty of a misdemeanor punishable by a fine of not more than one-thousand dollars (\$1,000), imprisonment for not more than one year in a county jail, or both. The guilty person must also pay one hundred dollars (\$100) for each carton of 200 cigarettes possessed, sold or offered for sale, as determined by the court. The court must direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization (Board).

Proposed Law

This bill would, for the period beginning on January 1, 2003, and ending on January 1, 2006, increase the penalty for possessing, selling or offering to sell unstamped cigarettes from one hundred dollars (\$100) to two hundred dollars (\$200) for each carton of 200 cigarettes. The court would direct 50 percent of the first one hundred dollars (\$100) to the local prosecuting jurisdiction and 50 percent to the Board. The second one hundred dollars (\$100) would be directed by the court to the Controller for deposit in the Unlawful Sales Reduction Fund, which this bill would create. Upon appropriation by the Legislature, the moneys in the fund would be allocated to the Office of Criminal Justice Planning (OCJP) for the funding of a competitive grant program.

The competitive grant program would enable grantee cities to establish a multi-agency task force, the composition of which would include prosecutors and local law enforcement personnel, for the purpose of significantly reducing the sales of black market cigarettes, and creating a deterrent to those sales through the focused

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

investigation and prosecution of sales of black market cigarettes and other associated offenses and related crimes. This bill would allow no more than 5 percent of the amount transmitted from the second one hundred dollars (\$100) of the penalty assessed be retained to fund the costs of administering the competitive grant program.

This bill states legislative findings that the sale of black market, untaxed cigarettes has resulted in the loss of hundreds of millions of dollars in revenue, robbing the state of healthcare and programs designed to help children.

This bill also states it is the intent of the Legislature to provide resources to prosecutors and local law enforcement personnel, and to enable cities to develop a multi-agency task force, for the purpose of significantly reducing the sales of black market cigarettes and creating a deterrent to those sales through the focused investigation and prosecution of sales of black market cigarettes, and other associated offenses and related crimes.

Background

In 1959, Assembly Bill 1172 (Chapter 1040) added Section 30474 to the Revenue and Taxation Code. In 1983, Assembly Bill 1485 (Ch. 1092) increased the amount of the penalty to be paid by a person guilty of possessing, selling or offering to sell unstamped cigarettes, from twenty-five dollars (\$25) to fifty dollars (\$50) for each carton of 200 cigarettes.

In 1993, Senate Bill 704 (Chapter 1113) increased the penalty to one hundred dollars (\$100) for each carton of 200 cigarettes. That bill also provided that the court shall direct 50 percent of the penalty assessed to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent to the Board.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Los Angeles City Attorney and is intended to reduce the availability of cigarettes on the black market, to restrict youth access to cigarettes, and to eliminate burglaries, vandalism and other street crime associated with black market cigarette sales.

According to the sponsor, the negative societal consequences of black market cigarette sales are staggering. Young people are the most likely to purchase black market cigarettes. Street vendors of illegal products sell in areas that are populated by young people, such as parks, video arcades and donut shops. They often sell near schools and in residential areas. Often, individual cigarettes are sold to minors. The younger a person begins to smoke, the more addicted the person becomes. In addition, law enforcement notes a correlation between gang-related activity and black market cigarettes. Street gangs play a prominent role in the contraband tobacco market, particularly those that run cigarettes from Mexico to Los Angeles.

Although local law enforcement, such as the Los Angeles Police Department, recognizes the increase in the black market cigarette cases, their resources are

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

often diverted to other priorities and they are unable to address this growing problem. This bill is intended to provide the needed resources to local law enforcement to reduce the availability of cigarettes on the black market, to restrict youth access to cigarettes, and to eliminate burglaries, vandalism and other street crime associated with black market cigarette sales.

2. **Summary of May 13 amendments.** These amendments add provisions that would continue the grant program for monies remaining in the Unlawful Sales Reduction Fund after the January 1, 2006 repeal date. Such provisions were added to the bill so the OCJP could continue to fund grants until monies in the Unlawful Sales Reduction Fund are depleted.
3. **Summary of April 22 amendments.** These amendments would require the OCJP, rather than the Board, to administer the competitive grant program. The OCJP, however, would be required to consult with the Board in the administration of the competitive grant program. The bill additionally makes various non-substantive changes.
4. **This bill would require the OCJP to consult with the Board in the administration of the competitive grant program.** Although it is not clear what this would entail, the Board is able to provide any statistical and other non-confidential information related to cigarette and tobacco tax evasion that would assist the OCJP in its administration of the competitive grant program. Statutory authority or an order from the Governor would be required for the Board to share confidential information with the OCJP. The Board would also provide assistance and training to prosecutors and local law enforcement personnel in the area of black market cigarettes. The Board would also take an active role in the Multi-Agency task forces created, which could include the following:
 - Assist the task force, created by this bill, in the identification and implementation of required program elements
 - Provide POST certified training to local law enforcement for unstamped cigarette investigations
 - Provide promotional material and awareness training for California District Attorneys and Magistrates
 - Establish a central liaison for the law enforcement community to facilitate local and statewide coordinated community compliance inspections
 - Provide referrals, when appropriate, to participating local law enforcement agencies
5. **Would this measure produce enough revenues for a grant program?** Under current law, each person convicted of possessing, selling or offering to sell unstamped cigarettes shall pay one hundred dollars (\$100) for each carton of 200 cigarettes. To date, only a very small fraction of seizures have resulted in penalty assessments. According to the Board's Investigations Division, the courts have assessed \$231,081 in penalties in the last six years. These penalties were all assessed in cases involving the prosecution of felony offenses. Felony offenses typically involve the administrative seizure of hundreds of cartons of cigarettes,

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

which would involve penalties in the millions of dollars if assessed at one hundred dollars (\$100) per carton of 200 cigarettes. Because the penalty would be extreme relative to the tax if assessed at the maximum amount, the courts typically decrease the amount of the penalty.

The penalty for selling unstamped cigarettes also applies to misdemeanor offenses. However, Board investigators do not have the statutory authority to issue misdemeanor citations. While local law enforcement does have the authority to issue misdemeanor citations, they do not have the resources to address the growing problem of cigarette tax evasion. This measure is intended to provide the necessary funding to local law enforcement to develop a multi-agency task force for the purpose of significantly cracking down on cigarette tax evasion. It is the sponsor's belief that most of this funding would come from the issuance of misdemeanor citations by local law enforcement.

COST ESTIMATE

Some minimal costs to consult would be incurred. However, these costs are expected to be absorbable.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Current law allows judges to impose a penalty of \$100 per carton on sellers of unstamped cigarettes. Board data indicate that an average of 17,000 cartons of cigarettes were administratively seized per year for a recent six-year period. Board investigators do not have statutory authority to issue misdemeanor citations as envisioned by AB 2205. Therefore, under current law, only a very small fraction of seizures have resulted in penalty assessments. Board Investigations Division staff data indicate that assessments obtained in Superior Court have averaged approximately \$40,000 per year over a period of six years. These are cases that were prosecuted for felony tax evasion. At \$100 per carton, this would be approximately 400 cartons per year, or about 2 percent of total cartons seized. At \$200 per carton, penalty assessments obtained through felony prosecutions would be about \$80,000 if there were no increase in the number of cartons assessed.

There is a great deal of uncertainty as to how many additional seized cartons would be assessed under the provisions of this bill. However, it is likely that assessments will increase considerably. Discussions with Board staff indicate that a reasonable assumption would be that 50 percent of cartons seized would be assessed the penalty from misdemeanor citations issued by local law enforcement and handled at the municipal court level. Under this assumption, penalty assessments would be approximately \$1.7 million (17,000 cartons x 0.50 x \$200 = \$1,700,000.) This is approximately \$1.6 million more than what the current number of assessed cartons would indicate (1,700,000 – 80,000 = \$1,620,000).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Revenue Summary

Under the provisions of this bill, penalty assessments would increase by approximately \$1.6 million.

Qualifying Comment

We have no information on actual collections of the \$40,000 in current-law penalty assessments. Projecting actual collections of increased assessments would be even more tenuous.

Analysis prepared by:	Cindy Wilson	445-6036	05/22/02
Revenue estimate by:	Joe Fitz	323-3802	
Contact:	Margaret S. Shedd	322-2376	
sf			2205-3CW.DOC

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.